STATE OF ARIZONA

**JANICE K. BREWER**
GOVERNOR

**EXECUTIVE OFFICE**

March 17, 2010

The Honorable Nancy Pelosi
Speaker, United States House of Representatives
Washington, DC 20515

The Honorable Harry Reid
Majority Leader, United States Senate
Washington, DC 20510

Dear Speaker Pelosi & Majority Leader Reid:

On December 30, 2009, the Attorneys General from several states wrote you expressing grave concerns about the Senate version of the Patient Protection and Affordable Care Act (H.R. 3590). Although amendments have been made to this bill since then, the primary constitutional defects remain. It is reported that Democratic Congressional leaders intend to move forward with legislation that uses this bill as its starting point. I therefore, on behalf of the State of Arizona, join these Attorneys General and urge you to reject H.R. 3590 and any legislation that contains similar legal deficiencies.

As Governor and the statutory officer authorized to communicate with Congress on behalf of the State of Arizona, I have contacted Arizona's delegation on more than one occasion expressing my serious policy concerns with H.R. 3590. Last week I wrote President Obama and told him quite clearly that Arizona simply cannot afford the unfunded mandate that will result from this legislation and outlined the disproportionate impact it will have on Arizona citizens.

The devastating impacts of the federal legislation will rob Arizonans of their rights and pocketbooks alike. One of the core principles of our nation's system of government is the critical balance between the power of the federal government and the protection of individual liberties. The constitutional framers granted Congress only certain enumerated powers and provided that all other powers are reserved to the states or the people pursuant to the Tenth Amendment.

H.R. 3590 represents a sweeping violation of these fundamental principles established by the founding fathers. By requiring all citizens to purchase health insurance or be penalized, this bill would impose on the people an unprecedented mandate by the federal government. As emphasized by the non-partisan Congressional Budget Office:
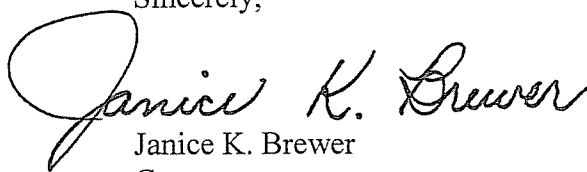
"The government has never required people to buy any good or service as a condition of lawful residence in the United States." This mandate violates the founders' intent to limit the intrusion of the federal government upon the rights of the individual.

The Commerce Clause is erroneously cited as a legitimate basis for Congress to impose the requirement to purchase insurance. As you are aware, the congressional power to regulate commerce is not without limits. The sole basis for claiming constitutional authority under the Commerce Clause is seemingly derived by coercing Americans to engage in commerce through the purchase of insurance and then regulating that coerced transaction. Even the non-partisan and independent Congressional Research Service raised serious concerns about the constitutionality of this proposal, noting that it may very well go beyond the bounds of the Commerce Clause.

I must also strenuously object to the benefit exchanges the proposed legislation would impose upon states. H.R. 3590 requires states to either enact state legislation and regulations to implement these exchanges or be forced to allow the Secretary of Health and Human Services to take over and do it for them. This requirement is not a condition to receive federal funding, but rather an absolute mandate to the states in direct contravention of the Tenth Amendment.

For the foregoing reasons, I will coordinate with the other State Attorneys General on behalf of the State of Arizona to challenge H.R. 3590 or any health care proposal that becomes law with any of the unconstitutional provisions I have outlined in this letter. Thank you on behalf of the citizens of Arizona for your consideration of these matters.

Sincerely,

Janice K. Brewer
Governor

JKB/jk

cc:    The Honorable Henry McMaster, South Carolina Attorney General